

the implementation of Executive orders or regulations issued pursuant to law). This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(a) This exemption applies, however, only to the extent that production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(2) Would deprive a person of the right to a fair trial or an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, naval activities shall neither confirm nor deny the existence or non-existence of the record being requested.

(ii) A refusal to "neither confirm nor deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to neither confirm nor deny" when a record does exist will itself disclose personally private information.

(iii) Refusal to "neither confirm nor deny" should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or, the person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(4) could reasonably be expected to disclose the identity of a confidential source, including a source within the DON, a state, local, or foreign agency or authority, or any private institution which furnishes information on a confidential basis; could disclose information furnished from a confidential source and obtained by a criminal law

enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D));

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)); or,

(6) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(b) Examples include:

(1) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(2) The identity of firms or individuals investigated for alleged irregularities involving contracting with Department of Defense or Department of the Navy when no indictment has been obtained nor any civil action filed against them by the United States.

(3) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within Department of Defense, or a lawful national security intelligence investigation conducted by an authorized agency or office within Department of Defense. National security intelligence investigations include background security investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(c) The right of individual litigants to investigate records currently available by law.

(d) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by SECNAVINST 5211.5C, "Personal Privacy and Rights of Individuals Regarding Records Pertaining to Themselves."

(e) *Exclusions.* Excluded from this exemption are the following two situations: